

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PROSPECT DCMH LLC dba
DELAWARE COUNTY MEMORIAL
HOSPITAL,

Plaintiff,

v.

XAVIER BECERRA, Secretary,
United States Department of Health
and Human Services,

Defendant.

Case No.: 2:24-cv-04678-PD

**DECLARATION OF ANTHONY ESPOSITO IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

I, Anthony Esposito, declare as follows:

1. I know the facts stated herein to be true of my own personal knowledge, and if called on to testify to such facts, could and would do so competently. During all times relevant to this matter, I have been the Chief Executive Officer of Delaware County Memorial Hospital (“DCMH”), the plaintiff in the within lawsuit.

2. I have carefully reviewed the complaint filed September 5, 2024 by DCMH in this matter, including Exhibits A – G to the complaint. I believe the

factual allegations in the complaint are true and correct. And, I know of my own personal knowledge that the exhibits are true and correct copies of the original documents.

3. At all times relevant to this action, Prospect DCMH, LLC, did business in this judicial district as Delaware County Memorial Hospital (DCMH). *See* Ex. A, Doc. 1-1, page 2 of 5.

4. By letter dated May 21, 2024, Novitas Solutions (“Novitas”) informed DCMH that its Medicare “provider agreement has been terminated and your enrollment in the Medicare program has been voluntarily terminated effective” November 7, 2022. In this same notice, Novitas informed DCMH that its Medicare billing privileges were being “deactivated” effective this same date, November 7, 2022. Novitas listed “CEASED OPERATIONS” as the reason for these actions. Ex. A, Doc. 1-1, page 2 of 5. DCMH did not receive this letter until May 29, 2024.

5. In this same letter, Novitas informed DCMH of its “REBUTTAL RIGHTS” to challenge the deactivation under 42 C.F.R. § 424.545(b) if it believed the “deactivation determination is not correct.” Novitas stated that DCMH “may only submit one rebuttal in response to this deactivation of your Medicare enrollment.” The letter provided no notice of the right to any other administrative appeal right or process concerning the termination of enrollment and the provider agreement. Ex. A to the Complaint, Doc. 1-1, page 3 of five.

6. Novitas is a Medicare Administrative Contractor (“MAC”) for the Centers for Medicare & Medicaid Services, (“CMS”), a governmental sub-agency of the Secretary of Health and Human Services. Novitas is a private company and not a part of CMS or any other governmental entity. *See* www.Novitas-solutions.com.

7. By letter dated June 4, 2024 (Ex. B, Doc. 1-2, pages 3-7), DCMH’s legal representative filed DCMH’s disagreement with the termination of its provider agreement and deactivation of its billing privileges “because DCMH did not voluntarily terminate its provider agreement, contrary to what was stated in the May 21 letter.” The letter explains in detail the factual basis for this position and provided supporting documentation, including DCMH’s September 21, 2022 to the Pennsylvania Department of Health (“PA DOH”) with updated information regarding DCMH’s intention to merge into Crozer Chester Medical Center, which would cause a “temporary pause in certain operations” at DCMH. Ex. D, Doc. 1-4, pages 2 and 3 of 3.

8. In an October 7, 2022 email, Garrison Gladfelter, the Chief of PA DOH’s Division of Acute and Ambulatory Care (Ex. E, Doc. 1-5, page 2 of 3), characterized DCMH’s “temporary pause” as a “temporary stop” as opposed to ceasing operations.

9. In response to DCMH’s June 4, 2024 rebuttal, Novitas issued a

“Rebuttal Determination” on July 1, 2024. Ex. C, Doc. 1-3, pages 2-4 of 4. The Determination consists primarily of a repetition of DCMH’s rebuttal contentions without responses and concludes that “as a result of the provider agreement being terminated, Novitas Solutions finds that the deactivation of Medicare billing privileges under 42 C.F.R. § 424.540(a)(7) was justified.” Once again, Novitas gave DCMH no notice of any further administrative appeal rights.

10. The November 7, 2022 retroactive effective date of Novitas’ May 21, 2024 and July 1, 2024 adverse decisions reflects the November 7, 2022 effective date of PA DOH’s November 4, 2022 order suspending DCMH’s emergency services and imposing a ban on admissions at DCMH due to “deficiencies” that “pose a significant threat to the health and safety of patients.” Ex. F, Doc. 1-6, page 3 of 6.

11. DCMH submitted plans of corrections to address the alleged deficiencies, including plans submitted in 2022 and March 2023. On May 17, **2024**, PA DOH informed DCMH that it was rejecting DCMH’s most recent plans of corrections and was denying the request for an approval of the merger plan proposed in 2022 based primarily on PA DOH’s November 7, 2022 order. Ex. G, Doc. 1-7, pages 5-6 of 8.

12. DCMH continued to furnish medically necessary services to “outpatients,” including Medicare beneficiaries, following State DOH’s imposition

of sanctions in November 2022. Such hospital outpatient services include radiology oncology services, imaging services, cyberknife services and surgical services. No one, including CMS and Novitas, gave DCMH any notice prior to its receipt of Novitas' May 21, 2024 that its Medicare provider agreement, enrollment and billing privileges were going to be terminated or deactivated. And, certainly no one indicated that such action was going to be implemented retroactively. DCMH did not intend to voluntarily or otherwise terminate DCMH's enrollment in Medicare in November 2022 or at any other time prior to Novitas' May 2024 decision. DCMH's plan to merge with another Prospect entity was intended to proceed in a manner that would have preserved DCMH's ability and right to continue to bill for its services throughout the transition and merger.

13. If the retroactive termination is permitted to be implemented retroactively as upheld by Novitas, not only will DCMH be at risk for recoupment/repayment of millions of dollars, but also may be unable to proceed with efforts to sell the hospital to a non-profit organization.

14. By notice mailed to DCMH on November 12, 2024, (Doc. 12, page 17), PA DOH informed DCMH that it was revoking its facility license effective November 12, 2024. The revocation was ordered based primarily on the findings of the November 4, 2022 PA DOH order (Exhibit F to the complaint) and a notice of further deficiencies issued in August 2024.

15. On or about January 2, 2025, Novitas sent DCMH a “PROVIDER PAYMENT SUMMARY REPORT,” two pages of which are excerpted and attached hereto. The report shows that Novitas is readjusting and disallowing previous payments made to DCMH in a sum in excess of \$3 million due to Novitas’ May 21, 2024 determination.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 14 day of January, 2025 in Upland, Pennsylvania.



Anthony Esposito

ATTACHMENT

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EasyPrint v4.6

PROVIDER PAYMENT SUMMARY REPORT

VER: 005010X221A1

PROVIDER NAME : PROSPECT DCMH LLC
 NPI # : 1548624851
 CHECK DATE : 01/02/25
 CHECK/EFT TRACE # : REMIT01968

TOTAL CLAIMS : 4019

BILLED AMOUNT : -26646751.97
 TOTAL REASON CODE ADJUSTMENT AMOUNT : -22874742.31
 TOTAL ALLOWED AMOUNT : -26418133.77

TOTAL COINSURANCE AMOUNT : -728328.43
 TOTAL DEDUCTIBLE AMOUNT : -18569.76

TOTAL PAID TO PROVIDER : -3025111.47

TOTAL INTEREST AMOUNT : 0.00
 TOTAL CHECK/EFT AMOUNT : 0.00

PLB ADJ DETAILS:	REASON	FCN/OTHER IDENTIFIER	AMOUNT
	FB	22435801310508PAA 32735250	-311.27
	FB	22435801690208PAA 34416135	-1225.66
	FB	22435802752808PAA 35655653	-156.93
	FB	22435802133208PAA 33196695	-123.82
	FB	22435802051008PAA 35828367	-83.45
	FB	22435803171508PAA 35711325	-291.90
	FB	22435801352008PAA 35369025	-104.31
	FB	22435801711508PAA 35311461	-1187.49
	FB	22435801573208PAA 33191184	-3288.15
	FB	22435801311808PAA 34382642	-123.82
	FB	22435801791408PAA 33753350	-207.05
	FB	22435802973908PAA 32861202	-115.03
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	FB	22435802673608PAA 32827758	-1755.33
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	FB	22435801370608PAA 35450060	-302.65
	FB	22435801630908PAA 35725791	-1768.84
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	FB	22435803172008PAA 33371678	-1777.11
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